Supreme Court, U.S.
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No._____

IN THE

Supreme Court of the United States

R. SCOTLUND VAILE,

Petitioner,

v.

CISILIE A. PORSBOLL,
KAIA L. VAILE, KAMILLA J. VAILE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May a federal appellate court rely solely on supplemental jurisdiction to avoid resolving an appeal of original subject matter jurisdiction based on diversity and federal RICO?
2. May a federal court assert personal jurisdiction over a party based solely on that party's participation in a related State court case where the State's highest court ruled there was no personal jurisdiction?
3. Are counterclaims to an amended complaint compulsory under Fed. R. Civ. P. 13(a) in accordance with Eighth Circuit precedent, or are they allowed only at a judge's discretion, as the Ninth Circuit held?

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petitioner R. Scotlund Vaile ("Mr. Vaile") respectfully petitions for a writ of certiorari to review the March 18, 2008 judgment of the United States Court of Appeals for the Ninth Circuit.

Opinions Below

The unpublished Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit is attached at Appendix A-1. The findings of fact, conclusions of law and decision of the U.S. District Court for the District of Nevada issued March 13, 2006 is attached at Appendix A-6.

Jurisdiction

The Ninth Circuit's Memorandum Opinion issued March 18, 2008. The appellate court denied rehearing on May 28, 2008. This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

Constitutional & Statutory Provisions

U.S. Constitution, Amendment XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1367.[1] Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the

1 The complete text of § 1367 is included in Appendix C.

court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

This case raises three important issues regarding the jurisdiction and procedures of the federal courts. Firstly, the Ninth Circuit, like the district court below, refused to address Petitioner Vaile's challenge to the original subject matter jurisdiction of the court. Instead, the appellate court asserted that the district court's basis for jurisdiction was "supplemental jurisdiction." Secondly, the appellate court held that personal jurisdiction over Mr. Vaile was proper based solely on his participation in state court proceedings. This holding directly contradicts that of Nevada's highest state court that the state court did not have personal jurisdiction of Mr. Vaile in those proceedings. Lastly, the appellate court affirmed the district court's refusal to permit Mr. Vaile's counterclaims in response to an amended complaint. Mr. Vaile's counterclaims were compulsory under the Federal Rules of Civil Procedure.

This case arises from a custody dispute in a Nevada state court between Petitioner Vaile and Respondent Cisilie A. Porsboll ("Ms. Porsboll"), that

followed a 1998 divorce. Ms. Porsboll ultimately prevailed in that action, which gave way for Porsboll's native Norway to make custody determinations over the parties' two American-born children. Ms. Porsboll brought suit in the U.S. District Court for the District of Nevada one month after the Nevada Supreme Court held that it lacked personal jurisdiction[2] of the parties, and subject matter jurisdiction[3] of custody and visitation issues. Ms. Porsboll asserted that Mr. Vaile's grant of a custody and pick-up order from a Nevada state court was fraudulent,[4] and that his exercise of that pick-up order to return his children to the United States from Norway constituted kidnapping. Ms. Porsboll included the parties' minor children as plaintiffs, and named 15 of Mr. Vaile's family members, his two

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2 "The first question before us is whether the district court had jurisdiction to enter its decree of divorce in 1998. We conclude that the district court did not have personal jurisdiction over either party, nor did it have subject matter jurisdiction over the marital status of the parties when it entered the decree." *Vaile v. Eighth Judicial District Court*, 44 P.3d 506, 511 (Nev. 2002). Further, "[t]he children have never lived in Nevada. Neither party has ever lived in Nevada. The children have never had any contact with Nevada, much less substantial contact with the state. Neither do the parents have substantial contact with Nevada." *Id.* at 515.

3 "The district court had no subject matter jurisdiction over the issue of child custody." *Id.* "In this case, the district court lacked subject matter jurisdiction over custody and visitation." *Id.* at 516.

4 The lower state court, before which the fraud was alleged to have occurred, had held the contrary. "The Court does not find that Mr. Vaile has intentionally tried to defraud the Court. . . ." *Vaile v. Vaile*, D230385, Nev. 8th J. Dist. Ct., Oct. 25, 2000. The Nevada Supreme Court did not overturn the lower court's finding.

previous attorneys, one friend, and various John Does as defendants. Ms. Porsboll made seventeen claims for relief, all surrounding the theory that the defendants conspired to find and hire counsel for Mr. Vaile, helped him obtain custody of his children, and effectuated the children's safe return from Norway, in alleged contravention of federal and state law, including RICO, fraud, kidnapping, and malpractice.

A. District Court Pre-Trial Proceedings

The original complaint asserted federal question and diversity jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332. In his answer, Mr. Vaile raised affirmative defenses including the failure to state a claim upon which relief could be granted and lack of personal and subject matter jurisdiction.

Through the course of discovery,[5] as the facts to support Ms. Porsboll's bases for jurisdiction were revealed, Mr. Vaile filed motions to dismiss the complaint based on the lack of both personal and subject matter jurisdiction. Also, in response to Ms. Porsboll's Second Amended Complaint, Mr. Vaile counterclaimed. The district court either denied or struck all of Mr. Vaile's motions and counterclaims. Eventually, the court dismissed all of the defendants from the litigation except Petitioner Vaile. After motions by the various defendants, only seven of the original seventeen claims for relief remained including intentional fraud upon the court; intentional and negligent infliction of emotional

5 Discovery lasted almost four years due largely to Porsboll's inability to travel to the US from her home in Norway. The delay in deposing Porsboll prevented Vaile from discovering the jurisdictional basis for Porsboll's suit.

distress; false imprisonment; federal and state RICO; and negligence.

As the time for trial in this case neared, Mr. Vaile elected to participate in settlement discussions with Ms. Porsboll. Although the court ordered both parties to appear at the settlement conference in Las Vegas, Ms. Porsboll refused, without sanction. Mr. Vaile proceeded, nonetheless, in negotiation with Ms. Porsboll's attorney, initially in Las Vegas as ordered, and then through correspondence. When settlement negotiations appeared to break down, the Magistrate Judge ordered Mr. Vaile to return to Las Vegas, Nevada from his residence in Virginia for a "settlement status conference." During this same period, Mr. Vaile's infant son from his subsequent marriage contracted scarlet fever. After notifying opposing counsel first, Mr. Vaile faxed a request to the district court to allow him to either appear telephonically, or to postpone the settlement conference until later in the week. The court notified Mr. Vaile that not only would the settlement conference not be postponed, neither would calendar call for trial, set for the following day.

Faced with the dilemma of whether to leave his seriously ill child or travel to Las Vegas for trial, Mr. Vaile filed a notification with the district court that he would cease his defense in accordance with Fed. R. Civ. P. 55(a). Mr. Vaile believed that the appellate court would address the apparent abuse of discretion in denying postponement as well as the threshold jurisdictional issues Mr. Vaile raised via motion during pre-trial proceedings. Mr. Vaile noted in his filing that he would not oppose the motion for default judgment.

B. The Trial

In response to Mr. Vaile's cessation of defense, Ms. Porsboll did not file a motion for default judgment. Instead, a bench trial on affidavit was held the following week, on February 27, 2008, with only Ms. Porsboll's attorney appearing. No evidence was heard at the trial, but the court asked Ms. Porsboll's counsel to email a copy of the proposed findings and judgment in WordPerfect form so that the court could remove counsel's name from the top of the document.[6] The findings and judgment proposed by Ms. Porsboll's counsel[7] were issued largely unedited by the district court on March 13, 2008 as the court's final order.

The only affidavit presented to the district court was filed March 30, 2008, more than a month *after* trial and 17 days *after* the judgment issued. The affidavit purported to be that of Ms. Porsboll, but was unsigned. No evidence was presented to suggest that Ms. Porsboll ever saw the affidavit.

The court awarded the plaintiffs over $960,000.00 in damages, excluding attorney's fees. Ms. Porsboll's attorney's recent request for attorney's

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6 One effect that perhaps Fed. R. Civ. P. 52(a) intended to prevent became evident in this case as a result of the district court's apparent contravention of the rule; Ms. Porsboll's proposed judgment included relief for civil conspiracy, a claim previously dismissed by the court, and for a child support arrearage, which Porsboll did not claim in her complaint or any subsequent filing. The appellate court corrected only the latter since the conspiracy formed the basis of Ms. Porsboll's enterprise theory.

7 The inflammatory writing style and factual inaccuracies of the decision are difficult to explain until one learns that the Las Vegas divorce attorney actually authored the findings, conclusions and judgment.

fees following the Ninth Circuit's mandate is well over $1,000,000.00 if treble fees are allowed as prescribed under the applicable RICO statutes.

C. Opinion of the Court of Appeals

Mr. Vaile timely appealed to the Ninth Circuit Court of Appeals raising the threshold jurisdictional issues, the sufficiency of the evidence, and abuse of discretion of the district court. Specifically, Mr. Vaile asserted that the court lacked subject matter jurisdiction because adverse parties were citizens of the same state[8] and the proper jurisdictional amount[9] was not alleged at the time the complaint was filed, negating diversity jurisdiction. Furthermore, federal question jurisdiction did not exist because, as Mr. Vaile raised on appeal, Ms. Porsboll did not plead or prove the elements of RICO,[10] the only federal claim in the complaint. Mr. Vaile also asserted that the court did not have personal jurisdiction because the Nevada Supreme Court held that it did not, and he had not had contacts with Nevada since or for two years prior to that decision. Mr. Vaile maintained that the district court abused its discretion in denying Mr. Vaile's counterclaims because they were compulsory or

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8 The plaintiff children, and defendants Vaile and his sister were all citizens of Texas at the time of filing. Plaintiff Porsboll and defendant DeBorgraaf were both aliens.

9 Porsboll claimed damages "in excess of $10,000" in her original complaint. She supported this figure by claiming costs and damages that she had been previously awarded in state court proceedings. Not only did these previous awards not suffice to fulfill the jurisdictional amount, but the district court also impermissibly incorporated the previous awards into the final judgment. ". . . Porsboll is awarded damages of attorneys fees and costs, awarded in other cases. . . ." See Decision, ¶ 4, Appendix B.

allowable under the rules. Mr. Vaile also demonstrated that Ms. Porsboll did not fulfill the elements of her claims for relief at trial.

The appellate court's subject matter jurisdictional analysis consisted of a single sentence: "Contrary to Vaile's contention that the district court lacked jurisdiction over the state law claims, the district court had supplemental jurisdiction because the operative facts for the RICO and state law claims were the same."[11] A-2. In so holding, the court refused to address Mr. Vaile's assertion that the district court had neither diversity nor federal question jurisdiction *over the case*.

Further in the opinion, the court refused to address the sufficiency of the pleading or proof of the RICO claim on which federal question jurisdiction, if it had existed, would have relied. The court reasoned that "[b]ecause damages were properly awarded under the intentional infliction of emotional distress claim, *we do not address* Vaile's challenge to the RICO...claims." A-4 (emphasis added). The appellate court's implication is that supplemental

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10 Ms. Porsboll did not present a *prima facie* case of RICO to support her federal question. She did not plead *or prove* under even normal pleading requirements: 1) the existence of a statutory enterprise, 2) that Vaile operated or managed that enterprise, 3) that the enterprise was engaged in interstate commerce, 4) that the enterprise engaged in racketeering activity, 5) that a pattern of racketeering activity existed, or 6) injury to her business or property. Where fraud formed the basis of the RICO claims, it required *particular* pleading under Fed. R. Civ. P. 9(b).

11 Ms. Porsboll did not claim supplemental jurisdiction as a basis for any of her claims, either in the court below or on appeal. Neither party raised or argued this issue in either forum.

jurisdiction provides the basis for subject matter jurisdiction of this case in the federal court, and does not depend on the existence of either diversity or federal question jurisdiction.

The appellate court dedicated another sentence to affirming the district court's exercise of personal jurisdiction: "The Nevada district court properly concluded that it had personal jurisdiction over Vaile because plaintiffs' claims arose from the custody order that Vaile obtained in Nevada state court." A-2. The appellate court did not address either the fact that the district court's conclusion on this point directly conflicts with the Nevada Supreme Court's holding on the same matter, or its preclusive effect.

The appellate court similarly refused to address whether Mr. Vaile's counterclaims in response to the amended complaint were compulsory or discretionary under the federal rules for civil procedure. The appellate court stated that "[t]he district court did not abuse its discretion by denying Mr. Vaile's motion for leave to file a counterclaim because Mr. Vaile's motion was filed six months after he filed his original answer and the record does not reflect any reasonable explanation for the delay." A-4 (internal quotations omitted). The court did not acknowledge that Mr. Vaile's counterclaims were filed timely together with his answer to the Second Amended Complaint.

Reasons for Granting the Petition

A. The U.S. Court of Appeals has Sanctioned the Expansion of the Federal Courts' Subject Matter Jurisdiction Contrary to Statute and the Direction of this Court

The requirement that federal courts establish jurisdiction as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1998). A federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower court in a cause under review. *Id.* at 95. The Ninth Circuit panel here declined to fulfill this obligation.

Mr. Vaile properly challenged both of the statutory bases of subject matter jurisdiction, diversity and federal question jurisdiction, Ms. Porsboll asserted in her complaint. The appellate court bypassed analysis of each and held that the district court had supplemental jurisdiction. Under 28 U.S.C. § 1367(a), the district court could only have supplemental jurisdiction "in any civil action of which the district courts have *original jurisdiction*." (emphasis added.)

For the last two-hundred years, this Court has mandated that the appellate courts are *required* to ensure that proper jurisdiction exists in any case. *Capron v. Van Noorden*, 2 Cranch 126 (1804). This Court has specifically directed this mandate at the Ninth Circuit in recent history. See *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997). This Court's "insistence" that the federal courts fulfill

their obligation on this matter exists even when neither party challenges subject matter jurisdiction. *Steel Co.*, 523 at 95. Surely the requirement is even more pronounced when a litigant, like Mr. Vaile, raises the issue in both the lower and appellate courts, and supports his challenge with clear facts and legal arguments.

To satisfy the mandate, federal courts are expanding the proposition that they have discretion to exercise supplemental jurisdiction in limited circumstances, even when federal claims have been dismissed, into a broad and independent grant of subject matter jurisdiction.[12] This Court should accept review to reinforce the rule that "supplemental" refers to jurisdiction in addition to, rather than in lieu of, original jurisdiction. Only a rare exception that must be carefully considered by the district court and closely monitored on appeal exists to that rule.

The Ninth Circuit has bypassed the "first and fundamental question" in any case by refusing to resolve the question of jurisdiction. See *Great Southern Fire Proof Hotel v. Jones*, 177 U.S. 449, 453 (1900). When courts have misplaced this principle historically, this Court has stepped in to remind the circuits that federal courts are courts of limited jurisdiction and possess only that power authorized by Constitution and statute. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). In order to prevent the largest appellate circuit from

12 *Cf. Executive Software North America, Inc. v. United States Dist. Ct.*, 24 F.3d 1545, 1556 (9th Cir. 1994) (holding that the exercise of supplemental jurisdiction over pendent claims is *mandatory*, unless a section 1367(c) category applies).

abrogating its responsibility for ensuring that subject matter jurisdiction exists in each case, and to prevent it from expanding the jurisdiction of the courts in this circuit, Petitioner Vaile respectfully requests that the Court again "step in" and grant certiorari here.

B. The U.S. Court of Appeals has Upheld Personal Jurisdiction of a Party in Direct Conflict with the Nevada Supreme Court's Previous Holding on the Same Matter

Nevada's highest state court found that Mr. Vaile had insufficient contacts with the state for the court to exercise personal jurisdiction over him. Yet the federal court found sufficient minimum contacts based on Mr. Vaile's participation in the Nevada court proceedings where jurisdiction was disputed. The federal court's conclusion on this matter, which directly conflicts with Nevada Supreme Court's holding, raises important federalism issues.

The Due Process clause of the Fourteenth Amendment operates to limit the power of a State to assert *in personam* jurisdiction over a nonresident defendant. *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408, 413-414 (1984). Typically, the Ninth Circuit applies the law (long-arm statute) of the forum state when no federal statute governs personal jurisdiction. *Panavision Int'l L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). States are the final arbiters of these state laws, and the construction that a state court gives to its statute is not a matter subject to federal court review. *New York v. Ferber*, 458 U.S. 747, 767 (1982).

In the state court proceedings at issue in this case, the Nevada Supreme Court applied its long-

arm statute to the facts and unequivocally held that "the [state] district court did not have personal jurisdiction over either party." *Vaile v. Eighth Judicial District Court*, 44 P.3d 506, 511 (Nev. 2002). The district court's decision in this case claimed to "take judicial notice of the factual findings contained within that [Nevada Supreme Court] Opinion, which are adopted and relied upon herein . . ." and then specifically repeated the Nevada Supreme Court's holding that it did not have personal jurisdiction of either party. See Findings of Fact, ¶¶ 1, 8, A-7, A-8. Although Ms. Porsboll did not allege that Mr. Vaile had any contacts with Nevada other than his participation in the state court proceedings, the Nevada holding that it did not have personal jurisdiction of Mr. Vaile was not adopted by the district court. This petition raises the question of whether the district court was required to do so.

The Ninth Circuit panel cited cases (without discussion) for two propositions in its memorandum opinion in support of its affirmation of the district court's exercise of jurisdiction over Mr. Vaile. One case cited by the panel stands for the proposition that Nevada's long-arm statute reaches the limits of due process set by the United States Constitution. The implication is that a theoretical exercise in guessing whether a state court would exercise personal jurisdiction in accordance with the state's long-arm statute trumps what the Nevada Supreme Court actually held in *this* case. Not only is this proposition logically unsound, it also ignores the federal statute on point.

The Full Faith and Credit Act, 28 U.S.C. § 1738 requires federal courts to give the same preclusive

effect to a state-court judgment as another court of the state would give. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005). This Court has long held that the principles of res judicata apply equally to questions of jurisdiction as to other issues. *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 706 (1982). In short, the district court was required to give the Nevada Supreme Court's decision applying its own long-arm statute to Mr. Vaile, preclusive effect.

The second case cited by the panel involved state court litigation where both the parties assented, and the court approved, of its exercise of jurisdiction. One party subsequently challenged personal jurisdiction in federal court litigation which arose from the state court proceedings. The appellate court's proposition in putting forth this case is apparently that if a party participates in state court litigation where the court exercises personal jurisdiction of the party, then the party is subject to federal court jurisdiction thereafter. Besides the problems that the proposition causes with regard to remoteness[13] and forum shopping,[14] the facts in that case are inapposite to those here. Although Mr. Vaile wanted the Nevada courts to take jurisdiction, he was refused. His previous desire for the state

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13 The remoteness issue becomes evident in a case where a party participates in court litigation in state A, where he is resident, and later moves to state B. Years later, the party is sued in federal court in state A where the defendants contacts have long since ceased. The panel's proposition suggests that personal jurisdiction over the defendant is proper because he previously took part in court proceedings in state A.

court to take jurisdiction of him does not undo the preclusive effect of the state court judgment.

Although it is anomalous that a state court would hold that it had no personal jurisdiction over parties who both attempted to assent to the jurisdiction of the court, this is of no consequence to the federal court proceedings here. The fact that the rendering court may have made an error of law with respect to a particular issue does not deprive its decision of the right to full faith and credit, so long as that court fully and fairly considered its jurisdiction to adjudicate the issue. *Id.* at 710.

Even without the mandate of the Full Faith and Credit Act, traditional notions of fair play and substantial justice would have guided the district and appellate courts to the same conclusion. See *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945). In the Nevada state court proceedings, Ms. Porsboll argued fervently on appeal that the lower court did not have jurisdiction and that only Norway's forum was proper. One month after successfully convincing the Nevada Supreme Court to reject jurisdiction and to deny Mr. Vaile all relief in that case, she turned to the federal court in Las Vegas, where she maintained that personal jurisdiction was proper and fair in her suit over Mr.

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14 This proposition encourages a plaintiff to file suit in a state court first when personal jurisdiction over a putative defendant is in question. Even if the state court finds that jurisdiction is not proper over the defendant, by appearing to contest jurisdiction in the state court, the defendant automatically becomes subject to the personal jurisdiction of the federal court subsequently. The proposition creates an expansive forum shopping tool between the state and federal courts.

Vaile and his family. An exercise of fairness would have dictated a contrary result.

Although there is a trend in federal courts to find "minimum contacts" in nearly all instances, the Ninth Circuit has carried that trend to the extreme by failing to reconcile the Nevada Supreme Court's ruling that minimum contacts did not exist, rendering the "minimum contacts" standard meaningless. In rejecting the holding of the State's highest court, the Ninth Circuit has threatened the uniformity and practicability of the standard for personal jurisdiction, and the principles of federalism protected by § 1738. Petitioner Vaile respectfully requests that this Court grant certiorari to enforce that full faith and credit applies equally to determinations of personal jurisdiction by state courts, and to reinvigorate the "minimum contacts" standard.

C. The U.S. Court of Appeals has Entered a Decision in Conflict with the Decisions of Courts in Other Circuits on the Same Important Matter

This petition also requests that the Court consider under what circumstances a counterclaim in response to an amended complaint is allowable under the federal rules. A careful textual analysis of Fed. R. Civ. P. 13(a) should lead a district court to the conclusion that counterclaims in response to an amended complaint are still compulsory (and therefore allowable) under the rule. The rule states that "[a] pleading shall state as a counterclaim any claim which at the time of serving the pleading, the pleader has against the opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. . . ." If,

at the time an amended complaint is filed, a defendant has a counterclaim that arises from the same transaction and occurrence, it would appear to be compulsory under the rule. Despite what appears to be clear language in the rule, lower federal courts and courts of appeal are split in their interpretation of this issue. This petition requests this Court to resolve the ambiguity.

The Ninth Circuit panel here held that the district court did not abuse its discretion in denying Mr. Vaile's counterclaim because the record did not reflect any reasonable explanation for his delay from the time that he filed his original answer. This holding does not answer the question raised by Mr. Vaile on appeal as to whether his claims were compulsory in response to an *amended* complaint. It also incorrectly attributes the delay between the amended complaints (and their associated counterclaim windows) to Mr. Vaile, who could not control this time frame.

If a rule could be distilled from the panel's holding, it would be that if a defendant does not counterclaim in response to an earlier complaint, the defendant may not subsequently counterclaim in response to a delayed amended complaint. Not only does this rule not have its basis in the federal rule, but it also allows a plaintiff to avoid counterclaims by excluding controversial issues from the original complaint and then, after a delay, amend the complaint to include the controversial issue which would otherwise be subject to counterclaim.

Because many courts apparently read ambiguity into Rule 13(a) under these circumstances, or believe that it does not apply to pleadings that are amended

and refiled, courts have fashioned their own judicial rules to address the situation. Some of these rules are more reasonable than others, but all differ from the rule distilled from the Ninth Circuit panel. For example, the Eighth Circuit has affirmed the judicial rule that when a plaintiff files an amended complaint which changes the theory or scope of the case, the defendant is allowed to plead and counterclaim anew as though it were the original complaint filed by plaintiff. *Tralon Corp. v. Cedarapids, Inc.*, 966 F. Supp. 812, 832 (N.D. Iowa 1997), aff'd *Tralon Corp. v. Cedarapids, Inc.*, 205 F.3d 1347 (8th Cir. 2000) (We thus affirm on the basis of the district court's rulings).

Courts in other circuits have adopted similar reasoning:

- In the Third Circuit: *Joseph Bancroft & Sons Co. v. M. Lowenstein & Sons, Inc.*, 50 F.R.D. 415, 419 (D. Del. 1970) ("since the amending pleader chooses to redo his original work, and receives the benefit of this nunc pro tunc treatment, he can hardly be heard to complain that claims filed against him are improper because they should have been asserted in response to his original pleading").
- In the Fourth Circuit: *Elite Entm't, Inc. v. Khela Bros. Entm't*, 227 F.R.D. 444, 446-448 (E.D. Va. 2005) (the most sensible view is that amended response may be filed without leave only when amended complaint changes theory or scope of case).
- In the Eleventh Circuit: *Brown v. E.F. Hutton & Co., Inc.*, 610 F. Supp. 76, 78 (S.D. Fla. 1985) ("when a plaintiff files an amended

complaint which changes the theory or scope of the case, the defendant is allowed to plead anew as though it were the original complaint filed by the plaintiff").

Courts in other circuits have adopted the reasoning that the scope or theory of the amended complaint is not decisive, but that the court's discretion regarding prejudicial delay[15] ultimately determines whether counterclaims will be allowed:

- In the Second Circuit: *Chrysler Corp. v. Fedders Corp.*, 540 F. Supp. 706, 712-713 (S.D.N.Y. 1982) (when plaintiff filed supplemental and amended complaint adding new claim, defendant not entitled to assert counterclaims as of right in amended answer, and court refused leave to add counterclaims when delay and prejudice to plaintiff existed).
- In the Third Circuit: *Owens-Illinois, Inc. v. Lake Shore Land Co.*, 610 F.2d 1185, 1188 (3d Cir. 1979) (court explicitly refused to follow *Joseph Bancroft & Sons Co. v. M. Lowenstein & Sons, Inc.*, 50 F.R.D. 415, 419 (D. Del. 1970) and denied permission to add counterclaim because of prejudicial delay).

Given the conflict between the Ninth Circuit panel's decision and courts of other circuits on this important and frequent issue in the federal courts, a determination from this Court is necessary to resolve under what circumstances a defendant may counterclaim in response to an amended complaint. Federal district courts nationally will benefit from clarification of how to apply Rule 13(a) uniformly under these circumstances.

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15 No prejudice was claimed by Ms. Porsboll in this case.

Conclusion

Because of the fundamental importance of the jurisdictional issues raised herein, and to ensure uniformity within the federal courts, this petition for a writ of certiorari should be granted.

Respectfully submitted,

R. Scotlund Vaile
Pro Se Petitioner
PO Box 727
Kenwood, CA 95452
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August 25, 2008

APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CISILIE VAILE PORSBOLL; et al., Plaintiffs - Appellees, v. ROBERT SCOTLUND VAILE, Defendant - Appellant, and KELLENE BISHOP; et al., Defendants.	No. 06-15731 D.C. No. CV-02-00706-RLH/RJJ MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, District Judge, Presiding

Submitted March 18, 2008**

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

06-15731

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Robert Scotlund Vaile appeals pro se from the district court's judgment in favor of plaintiffs following a bench trial in this action alleging violations of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO") and various state laws. We have jurisdiction under 28 U.S.C. § 1291. We affirm in part, vacate in part, and remand.

Contrary to Vaile's contention that the district court lacked jurisdiction over the state law claims, the district court had supplemental jurisdiction because the operative facts for the RICO and state law claims were the same. *See Brady v. Brown*, 51 F.3d 810, 815-16 (9th Cir. 1995).

The Nevada district court properly concluded that it had personal jurisdiction over Vaile because plaintiffs' claims arose from the custody order that Vaile obtained in Nevada state court. *See Thompson v. Thompson*, 798 F.2d 1547, 1549 (9th Cir. 1986) (concluding, in action under Parental Kidnapping Prevention Act, that California district court had personal jurisdiction over defendant who had previously filed for divorce and custody in California state court), *aff'd*, 484 U.S. 174 (1988); *see also Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857, 863- 68 (9th Cir. 2003) (concluding that second action "sufficiently a[rose] out of or result[ed] from" first action); *Baker v. Eighth Judicial Dist. Court*, 999 P.2d 1020, 1023 (Nev. 2000) ("Nevada's long-arm

statute reaches the limits of due process set by the United States Constitution.").

Appellees' failure to bring their tort claims against Vaile in the Nevada or Texas family law proceedings does not bar their claims under the doctrine of res judicata or the rules governing compulsory counterclaims. *See Noel v. Hall,* 341 F.3d 1148, 1166 (9th Cir. 2003) (requiring federal courts to apply state law in determining preclusive effect of state court judgments); *re J.G.W.,* 54 S.W.3d 826, 833 (Tex. App. 2001) (holding that tort claims based on ex-spouse's wrongful taking of children were "ancillary to" prior custody proceedings and thus not barred by res judicata). The issue of whether Vaile's false statements were intentional is not subject to collateral estoppel because Vaile's intent was not "actually litigated and essential to" the state court judgment. *Getty Oil Co. v. Ins. Co. of N. Am.,* 845 S.W.2d 794, 801 (Tex. 1992); *LaForge v. State,* 997 P.2d 130, 133 (Nev. 2000) (defining collateral estoppel under Nevada law). Moreover, to the extent Vaile argues that the Nevada Supreme Court concluded that he did not make false statements to obtain the custody order, his argument is unpersuasive. *See Vaile v. Eighth Judicial Dist. Court,* 44 P.3d 506, 519 (Nev. 2002) (discussing Vaile's "untruthful representations" to the state court).

The district court did not err by concluding that Vaile was liable for intentional infliction of emotional distress. First, to the extent the district

court judgment can be construed as a default judgment based on Vaile's consent, the intentional infliction of emotional distress claim was adequately pleaded in the Second Amended Complaint. *See Benny v. Pipes,* 799 F.2d 489, 495 (9th Cir. 1986), *amended,* 807 F.2d 1514 (9th Cir. 1987). Second, there was evidence that (1) Vaile made false statements to obtain both a custody order from the Nevada state court and new passports for Vaile and Porsboll's two children; and (2) then, without notice to Porsboll, Vaile took the children from Porsboll in Norway and brought them to the United States. *See Dillard Dep't Stores, Inc. v. Beckwith,* 989 P.2d 882, 886 (Nev. 1999) (outlining elements of intentional infliction of emotional distress claim under Nevada law); *see also Lentini v. Cal. Ctr. for the Arts,* 370 F.3d 837, 843 (9th Cir. 2004) (reviewing findings of fact for clear error). Because damages were properly awarded under the intentional infliction of emotional distress claim, we do not address Vaile's challenge to the RICO and related state law claims. *See Lentini,* 370 F.3d at 850 ("We may affirm a district court's judgment on any ground supported by the record[.]" (citation omitted)).

The district court did not abuse its discretion by denying Vaile's motion for leave to file a counterclaim because Vaile's motion was filed six months after he filed his original answer and the record "does not reflect any reasonable explanation" for the delay. *Ralston-Purina Co. v. Bertie,* 541 F.2d 1363, 1367 (9th Cir. 1976).

Further, the district court did not abuse its discretion by denying Vaile's request to continue the pretrial conference on the eve of trial. *See Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 961 (9th Cir. 2001) (explaining that a district court's decision concerning a continuance is entitled to great deference and will be reversed only if there is a clear abuse of discretion).

However, the district court improperly decided the issue of child support. The Second Amended Complaint does not allege a claim for unpaid child support and there is no evidence in the record of express or implied consent to try the issue. *See Consol. Data Terminals v. Applied Digital Data Sys., Inc.*, 708 F.2d *385*, 396 (9th Cir. 1983). Accordingly, we vacate the award of damages for unpaid child support and remand to the district court for further proceedings. *See id.* at 397.

We deny Vaile's request to remand this case to a different judge because the record does not indicate that the case presents the rare circumstances necessary to warrant reassignment. *See Hernandez v. City of El Monte*, 138 F.3d 393, 402-03 (9th Cir. 1998).

Appellees' request for an order prohibiting Vaile from future filings is denied.

The parties shall bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

***

CISILIE VAILE PORSBOLL, fna CISILIE A. VAILE, individually and as Guardian of KAIA LOUISE VAILE and DAMILLA JANE VAILE, minor children, Plaintiff(s), vs. ROBERT SCOTLUND VAILE, Defendant(s).	2:02-cv-0706-RLH-RJJ **FINDINGS OF FACT and CONCLUSIONS OF LAW and DECISION**

This matter came on for trial, as duly scheduled and noticed, before the Honorable Roger L. Hunt, U.S. District Judge, on February 27, 2006. Plaintiffs were represented by and through their attorneys, the Willick Law Group. Defendant Robert Scotlund Vaile did not appear. He had filed a "Notice of Cessation of Defense" (#303, filed February 21, 2006), noting that he would not oppose an eventual judgment entered against him in this matter, and did not appear at the Calendar Call on February 22, 2006, as ordered by the Court.

Having reviewed all the pleadings, exhibits, written affidavits, and being fully advised of the

facts and the law, the Court makes the following Findings of Fact and Conclusions of Law and Decision, and renders the Judgment filed separately herein:

FINDINGS OF FACT

1. The findings of fact contained within the *Opinion* issued by the Nevada Supreme Court on April 11, 2002,[1] are entitled to recognition by this Court; this Court exercises its discretion to take judicial notice of the factual findings contained within that Opinion, which are adopted and relied upon herein to the degree not otherwise specifically addressed in these Findings of Fact.
2. Plaintiff Cisilie Porsboll, formerly known as Cisilie Vaile, is a citizen and resident of Norway. Defendant R. Scotlund Vaile is a citizen of the United States who currently claims residence in the State of Virginia, where he has indicated he is enrolled in law school. Plaintiffs Kaia and Kamilla Vaile are the minor children of Cisilie and Scotlund, and are residents of Norway, having dual citizenship.
3. As of August 1998, when the parties were divorced, Cisilie had physical custody of both children, in Norway.
4. Defendant Scotlund intentionally committed a fraud upon the Eighth Judicial District Court in and for the County of Clark, State of Nevada in his initial "Complaint for Divorce," in *Vaile v.*

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1 *See Vaile v. District Court,* 118 Nev. 262, 44 P.3d 506 (2002).

Vaile, Case No. D230385. He made further and other false assertions of fact in his later *Motion* filed in that case, under which he fraudulently induced Judge Steel of that court to issue a change in custody. That Order was never domesticated in Norway, and was ultimately set aside by the Nevada courts.

5. Defendant Scotlund violated federal law in seeking and obtaining "replacement" passports for the children that were subsequently utilized as part of their abduction or kidnap from Norway.
6. Defendant Scotlund conspired with his friend, Anne Fonde DeBorgraaf, his brother-in-law, Scott Bishop, and his parents, Buck and Janitye Vaile, to abduct the children from their mother's custody. Scotlund executed his plan in May 2000, kidnaping or abducting both children in Norway and smuggling them across international borders and State lines using the fraudulently-obtained passports, under color of authority of the fraudulently-obtained Nevada State Family Court Order.
7. Ultimately, the children were brought by Scotlund to Texas, where they remained until they were recovered and returned to Cisilie in April 2002.
8. On April 11, 2002, the Nevada Supreme Court issued its *Opinion* in *Vaile v. District Court,* 118 Nev. 262, 44 P.3d 506 (2002), in which the court found that Scotlund was never a resident of the State of Nevada, and had falsely so claimed in

both his original divorce paperwork and his later motion seeking custody of the children. The court also found that the children never lived in Nevada, and that the lower court never had subject matter or personal jurisdiction to enter any kind of order relating to child custody. The court found that the children are habitual residents of Norway, that Scotlund wrongfully removed them from Norway, and that Scotlund took custody of the children under an invalid order. The Nevada Supreme Court issued a writ of mandamus compelling the district court to vacate those portions of its decree relating to custody and visitation and to order the children's return to Norway. The *Order* filed April 12, 2000 (from the hearing of March 29, 2000) was set aside in its entirety as invalid in all respects.[2]

9. On April 16, 2002, the Nevada district court issued its order pursuant to the Writ of Mandamus, stating in part that "all provisions of the *Decree of Divorce* filed August 21, 1998, bearing on custody and visitation of the children at issue, or incorporating the custody and visitation terms of the parties' 'agreement' dated July 9, 1998, are hereby void and unenforceable, and have been vacated. All aspects of the *Orders*

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2 Judge Steel has filed an affidavit in this action, indicating that she never would have issued that *Order* if she had been told the truth, and that she was tricked by the multiple false statements in Scotlund's written and oral presentation into entering the invalid *Order*.

entered April 12, 2000, and October 25, 2000, are invalid and void in their entirety."

10. The April 16 Nevada *Order* was domesticated in Texas on April 17, 2002, and given full faith and credit by the Texas Court; Cisilie was given custody of the children and permission to return to Norway with them. Scotlund was assessed $45,419 (attorney's fees of $20,359 and costs of $25,060), which were to incur interest at 10% per year compounded annually, in compensation for the damages he caused Cisilie to incur in Texas in recovering the children. Scotlund has never complied with any part of that court order to make payment.
11. Scotlund filed further Petitions in the appellate courts of Texas, which were finally denied on May 9, 2002. On June 13, a "Rule 11 Agreement" was filed, in which Scotlund stipulated to the costs Cisilie had incurred in responding to his Petitions in Texas. The Texas trial court denied his motion for a new trial on June 18, 2002, and assessed Scotlund $23,797.90 in additional fees, in accordance with the Rule 11 Agreement, to incur interest at 10% per year compounded annually. To date, Scotlund has never complied with any part of the court order to make those payments, either.
12. On December 3, 2002, Scotlund filed a *Petition for Writ of Certiorari* in the United States Supreme Court, attacking the Nevada Supreme Court *Opinion*.

13. On March 10, 2003, the United States Supreme Court denied Scotlund's *Writ.*

14. On May 15, 2003, the Texas Court of Appeals dismissed Scotlund's appeal as untimely.

15. In July, 2003, the Nevada Family Court issued an *Order* requiring that Scotlund pay $116,732.09 to Cisilie in compensation for the costs and fees incurred in Nevada for the recovery of the children. Scotlund has never complied with any part of that court order.

16. The Nevada *Decree of Divorce* required Scotlund to pay child support on a monthly basis to Cisilie, under a complex formula. Scotlund never supplied the income and other information necessary for such calculations, but he consistently earned income in excess of $100,000 per year.

17. Scotlund unilaterally determined that the formula in the *Decree* required him to pay 11,000 Norwegian Kroners in child support, a sum equivalent to approximately $1,300(U.S.) per month. He paid that amount to Cisilie from August 1998, through March 2000, but has not paid any support for the children since that time.

18. No valid United States court order has ever altered the obligation imposed by the Nevada *Decree of Divorce,* and the Nevada Supreme Court *Opinion* verified that, as a matter of State law, when a person such as Scotlund has submitted himself to the jurisdiction of a court,

such a support obligation can and does stay in effect even if the court entering it did not have jurisdiction to make an award of custody of the subject children.

19. Assuming that Scotlund correctly calculated the amount of child support due under the Nevada order back in 1998, and disregarding the cost of living adjustment called for in that order, and Scotlund's various increases in salary over the years, a minimum sum of $138,500 in arrears in child support principal, interest, and penalties has accrued under the Nevada child support order from the time Scotlund stopped paying child support in March 2000, through February 2006.

20. After the recovery of the children, Norway independently issued temporary custody, support, and visitation orders (effective as of April 2002). Scotlund has acknowledged receipt of those orders, but has not paid any support for the children in accordance with those orders, either. Even without taking into account the cost of living adjustment in the Norwegian orders, the minimum amount of arrears that accrued thereunder between April 22 2002, and February 2006, converted into U.S. dollars, is approximately $48,000.

21. Beginning with the kidnaping or abduction of the children, and continuing for the two years required to recover the children, and thereafter, Cisilie experienced severe emotional and

psychological trauma, including physical symptoms requiring medical attention. She missed many weeks of work as a result of both the resulting symptoms, and as a matter of time necessary to deal with the American legal proceedings, incurring further financial loss.

22. Beginning with the kidnaping or abduction of the children, and continuing for the two years required to recover them, and thereafter, the children experienced emotional and psychological trauma as a result of Scotlund's removal of them from their home, family, and country, including nightmares and severe anxiety attacks. The children have been in counseling and therapy, and have exhibited ongoing symptoms of psychological trauma, including physical manifestations of stress. The expert psychological opinion is that the damage was significant and can reasonably be expected to require continuing therapeutic intervention indefinitely into the future.

23. The actual damages caused by Scotlund's actions have been extraordinary. Cisilie incurred $116,732.09 in costs, fees, and expenses in the Nevada State court proceedings to recover the children, another $95,819.47[3] in the Texas proceedings, another $20,395[4] in the proceedings

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3 $69,398.90 reduced to judgment by the Texas courts, and simple interest at 10%, in accordance with those orders from entry, through February 27, 2006.

4 $16,548 in fees, and $3,847 in costs.

in the United States Supreme Court, and a sum equal to some $15,512 in the courts of Norway. Scotlund has never paid any part of any judgment of any court that has found him liable.

24. The litigation expenses incurred by Cisilie in bringing the current action in this Court purportedly include $26,939 in costs, and more than $312,000 worth of attorney and staff time. Travel and other costs have totaled an additional approximate $10,000.

25. Scotlund's conduct and actions were intended to and did cause the infliction of emotional distress upon all three Plaintiffs, and were the actual and proximate cause of that damage.

26. Scotlund had a duty to Plaintiffs, including but not limited to not abducting the children, and not giving false testimony to and abusing the process of the courts. Scotlund breached all those duties.

27. Scotlund's conduct and actions negligently caused the infliction of emotional distress upon all three Plaintiffs, and were the actual and the proximate cause of that damage.

28. Scotlund intentionally confined the children without actual or implied consent by the children or Cisilie, and without legitimate authority, constituting the false imprisonment of the children.

29. Scotlund's planning and execution of the kidnap, and subsequent false imprisonment of the

children, intentionally interfered with the custodial rights of Cisilie.

30. Scotlund had a duty not to violate the law, abuse process, abduct the children, conceal the children, and withhold the children from Cisilie's custody. Scotlund's violations of those duties were the actual and the proximate cause of Plaintiffs' damages.

31. Scotlund has committed, or aided and abetted the commission of, acts with the same or similar pattern, intents, results, accomplices, victim, or methods of commission, and/or which are otherwise interrelated by distinguishing characteristics and are not isolated incidents, and which would constitute crimes related to a pattern of racketeering activity including at least two racketeering acts. These acts include Scotlund's kidnap of the children, and Scotlund's obtaining passports for the children with falsified documentation.

32. Scotlund's conduct constituted willful and malicious injury to Cisilie and the children, which conduct is encompassed by within the range set out in 11 U.S.C. § 523(6).

33. Scotlund failed to comply with the *Order Regarding Trial* filed February 13, 2006, since he (1) failed to timely file trial briefs, suggested voir dire questions and proposed jury instructions, as prescribed by the Pretrial Order; (2) failed to appear for Calendar Call without first having been excused by the Court and (3) failed to timely

comply with orders scheduling deadlines for trial preparation.

34. Scotlund filed a "Notice of Cessation of Defense" on February 21, 2006, and explained that he would not oppose a default, although that document further claims that an appeal is an eventuality.

35. Scotlund was required to attended Calendar Call in this action on February 22, 2006, and produce documents pertaining to trial preparations for this Court's review prior to trial. The mandatory nature of his attendance at Calendar Call was telephonically verified with Scotlund. Scotlund nevertheless failed to appear at Calendar Call.

36. Scotlund's actions, failures to act, and communications have amply demonstrated contempt of this Court and its processes, as well as contempt for the orders of various courts in the United States and elsewhere in the world.

37. Scotlund has knowingly refused to provide support for his children for a period of some six years. Under any conceivable mathematics, the sum he owes in arrearages exceeds the thresholds set out in NRS 201.020(2)[5] and Title 18, Chapter

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5 On multiple grounds. There is a court ordered support obligation that Scotlund has knowingly failed to pay, arrearages in the amount of $10,000 or more have accrued since the time a court first ordered him to pay support, there has been a second or subsequent violation in that additional arrearages totaling $5,000 or more have accrued since the time a court first ordered him to provide support, and arrearages totaling $5,000 or more have accrued since the

1 1A, Section 228 of the United States Code ("Failure to pay legal child support obligation")[6] for felony non-support under state and federal law.

38. As a direct and proximate result of Scotlund's wrongful acts, Cisilie has been caused to expend hundreds of thousands of dollars to locate, visit, and ultimately litigate to recover custody of her children. Scotlund's disregard of all orders entered by all courts to date purportedly required the expenditure of costs and time worth over $349,000 to bring this matter to trial.

39. If any of these Findings of Fact are more properly considered Conclusions of Law, they should be so construed.

CONCLUSIONS OF LAW

1. Scotlund has committed fraud, conspiracy, kidnaping or abduction, intentional and negligent infliction of emotional distress upon all three Plaintiffs, false imprisonment of the children, and intentional interference with Cisilie's custodial rights.

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time a court in another jurisdiction first ordered him to provide support.

6 Again, on multiple bases. The child to whom support is owed resides in another state, there is a court-ordered support obligation, there has been a willful failure to pay the support obligation for a period longer than two years, and there are arrearages of more than $10,000. Scotlund has used interstate or foreign commerce with the intent to evade a support obligation that has been unpaid for over a year and that is greater than $5,000.

2. Scotlund's intentional perjury and offering false evidence in the Eighth Judicial District Court, in and for the County of Clark. State of Nevada, in *Vaile v. Vaile,* Case No. D230385, his kidnaping or abduction of the children, and his obtaining passports for the children with falsified documentation, renders Scotlund liable for punitive damages.
3. This judgment shall be considered non-dischargeable in bankruptcy pursuant to 11 U.S.C. 17 § 523(6) as Scotlund has, by virtue of his conduct, committed a willful and malicious injury against all three Plaintiffs.
4. Scotlund is guilty of non-support of his children under applicable state and federal law.
5. Scotlund is in direct contempt of this Court for violation of the Orders of Judge Hunt regarding Calendar Call, and for violation of directions set forth in the Order Regarding Trial.
6. Scotlund's course of conduct in the actions noted above, and the amount of economic and other harm inflicted by Scotlund, is shocking to the conscience and demonstrates a wanton and malicious conduct, or a conscious disregard for the wrongfulness of his actions, entitling Plaintiffs to imposition of punitive damages.
7. Plaintiffs are entitled to an award of attorney's fees and costs in this action.

8. If any of these Conclusions of Law are more properly considered Findings of Fact, they should be so construed.

DECISION

Based upon the foregoing Findings of Fact, Conclusions of Law, and the evidence elicited at trial, it is the decision of the Court that judgment enter in favor of the Plaintiffs and against Defendant Robert Scotlund Vaile as follows:

1. Plaintiff Cisilie Vaile Porsboll is awarded $150,000.00 as and for injury, pain and suffering, including emotional and psychological pain, suffering and distress caused by R. Scotlund Vaile's abduction or kidnaping, false imprisonment, acts of fraud and conspiracy, and negligent or intentional infliction of emotional distress.
2. Minor Plaintiff Daia Louise Vaile is awarded $150,000.00 as and for injury, pain and suffering, including emotional and psychological pain, suffering and distress caused by R. Scotlund Vaile's abduction or kidnaping, false imprisonment, acts of fraud and conspiracy, and negligent or intentional infliction of emotional distress.
3. Minor Plaintiff Kamilla Jane Vaile is awarded $150,000.00 as and for injury, pain and suffering, including emotional and psychological pain, suffering and distress caused by R. Scotlund Vaile's abduction or kidnaping, false

imprisonment, acts of fraud and conspiracy, and negligent or intentional infliction of emotional distress.

4. Plaintiff Cisilie Vaile Porsboll is awarded damages of attorneys fees and costs, awarded in other cases as a result of her having to come to the United States to recover her children, overturn fraudulently obtained orders, and regain custody of her children, in the amount of $272,255.56, plus interest until paid.
5. Plaintiff Cisilie Vaile Porsboll is awarded judgment against Defendant R. Scotlund Vaile for arrears in child support payments, including interest and penalties, as of February 2006, in the amount of $138,500.00.
6. Plaintiff Cisilie Vaile Porsboll is awarded punitive damages against Defendant R. Scotlund Vaile in the amount of $100,000.00. Plaintiff Cisilie Vaile Porsboll is awarded attorneys fees and costs in this action in an amount to be determined upon submission of sufficient documentation and verification as required by the Local Rules.

Dated: March 13, 2006.

ROGER L. HUNT
United States District Judge

28 U.S.C. § 1367

§ 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the

claim or claims over which the district court has original jurisdiction,
(3) the district court has dismissed all claims over which it has original jurisdiction, or
(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.
(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.
(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.